

Uri Dallal
The Dallal Firm, PC
2500 Plaza 5
Harborside Financial Center
Jersey City, NJ 08837
Tel: 732 650 1551
Fax: 347 514 9995
uri@dallalfirm.com

Attorneys for Plaintiff DGL Group, Ltd.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DGL Group, Ltd.,

Plaintiffs

v.

C&A Marketing, Inc.

Defendant.

Civil Action No. _____

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff DGL Group, Ltd. (“DGL”), a New York corporation doing business at 195 Raritan Center Parkway, Edison, New Jersey 08837, for its Complaint against defendant C&A Marketing, Inc. (“C&A”), 2 Bergen Turnpike, Ridgefield Park, New Jersey 07660, alleges as follows:

NATURE OF THE SUIT

1. DGL seeks injunctive relief and damages for acts of trademark infringement, unfair competition, false designation of origin, cybersquatting, common law trademark infringement and unfair competition, deceptive acts and practices, tortious interference with prospective economic advantage, breach of contract and breach of implied covenant of good faith and fair dealing under the laws of the United States and the State of New Jersey.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over the subject matters of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1332, 1338, and 1367. DGL’s claims are predicated upon the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 et seq., N.J.S.A. 56:4-1, and the common law of the State of New Jersey.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) because C&A resides in this district, does and transacts business in this district and may otherwise be found in this district.

PARTIES

4. Plaintiff DGL is a New York corporation with its principal place of business in Edison, New Jersey.

5. Upon information and belief, defendant C&A is a New Jersey corporation having its principal place of business in Ridgefield Park, New Jersey

BACKGROUND

DGL and DGL Marks

6. DGL's wide range of innovative, affordable, and quality consumer electronics and related accessories can be found on the shelves websites of the biggest retail chains in the United States and on the largest online marketplaces in the world.

7. Since as early as 2008, DGL has marketed, promoted, and sold headphones, earphones, mp3/mp4 players, speakers (personal use and otherwise), cellular phone and smartphone accessories, tablet and computer accessories, and other related consumer electronic products (the "Products") continuously under the brand HYPE (both alone and in combination with other words) across a number of states with its vendors. Over 1,000 DGL SKUs bear the HYPE mark and that number is growing.

8. DGL owns the trademark for HYPE in the United States, a true and correct copy of which is attached as Exhibit 1:

Reg. No.	Registered:	First	Goods/Services:

		Used:	
3734932	Jan. 5, 2010	2008	MP3 players with earphones and MP4 players with earphones

9. The HYPE mark was created by DGL's officers and employees. The HYPE mark does not describe or suggest anything about DGL's Products.

10. The HYPE trademark is inherently distinctive.

11. DGL has used HYPE (both alone and in combination with other words) as its brand identity, garnering significant acquired distinctiveness in the consumer electronics and accessories industry. In light of DGL's use of the HYPE mark and its efforts to strengthen its mark, DGL's HYPE mark has become a valid and protectable trademark under federal, state, and local laws.

12. There are a considerable number of resellers located throughout the United States who purchase DGL's goods directly from DGL or from authorized distributors and sell DGL's HYPE branded goods to individual customers.

13. DGL's HYPE brand Products retail prices range from \$9.99 to \$99.99.

14. Through tireless efforts by DGL and the investment of much time and money, the Products sold under the HYPE brand have earned consistent placement on the shelves and web sites of the biggest retailers in the United States including Wal-Mart, Best Buy, Walgreens, and others, in addition to strong presence in

online marketplaces and “deal” sites. DGL’s product innovation has been recognized by the Consumer Electronics Association, a well-known technology trade association and producer of the world famous International CES show as DGL was a recipient of the CES Design and Engineering Showcase Award. A true and correct photo of the award is attached as Exhibit 2.

15. By virtue of the foregoing, and continuous and exclusive use of the HYPE mark, DGL has caused the HYPE mark to become well-known in the consumer electronics and accessories industry and among the purchasing public. DGL is readily identified as the source of goods bearing the HYPE mark and other marks using the HYPE mark in combination with other words. DGL has developed substantial and exclusive market reputation in its HYPE mark.

16. The HYPE mark has acquired a reputation both in trade and among the purchasing public as identifying consumer electronics and accessories emanating from DGL and adhering to DGL’s standards.

Defendant C&A’s Wrongful Conduct

17. Upon information and belief, defendant C&A has been selling speakers (personal use), speakerphones, and smartphone/tablet power sources under the mark HIPE (the “Infringing Product”), which name is likely to cause confusion amongst relevant consumers with DGL’s HYPE mark and deceive consumers regarding the origin, affiliation, connection or association of its good and services and DGL’s.

18. Upon information and belief, under the username DBROTH (and other not yet known to DGL) C&A has sold the Infringing Product through online retail websites, including prominent sites Amazon, eBay, and Rakuten, in addition to other resellers who sell the products through numerous other mediums. *See, e.g.*, listings attached hereto as Exhibit 3, 4, and 5.

19. On December 19, 2011, the United States Patent and Trademark Office refused to register C&A's infringing HIPE mark because Examining Attorney Leslie L. Richards found HIPE to be confusingly similar with DGL's HYPE mark. Copies of the application and office action as made public by the USPTO are attached as Exhibits 6 and 7.

20. Under information and belief, C&A also operated the web site HIPEUSA.com since at least as early as July 2013. A true and accurate copy of printout from Network Solutions' "Whois" database for this domain is attached as Exhibit 8.

21. Immediately upon learning of such activity, on July 19, 2013, through its counsel, DGL sent defendants C&A a letter directing C&A to cease and desist the sales of its speakers, speakerphones, and power sources for consumer electronics under the brand HIPE in light of its confusion with DGL's HYPE mark.

22. Defendant C&A responded to DGL's letter expressing willingness to settle the matter and in August 2013, DGL and C&A reached a settlement and

reduced their terms to a written agreement (the “Settlement Agreement,” attached hereto as Exhibit 9).

23. According to the terms of the Settlement Agreement defendant C&A agreed to the following:

- a) That C&A would not contest any claims made by DGL that the HIPE mark is confusingly similar to DGL’s HYPE mark (*See*, Exhibit 9 Settlement Agreement section 8);
- b) That the Federal Trademark Registration for the mark HYPE, Registration Number 3734932, as well as other related marks under common law (collectively, the “Marks”) were valid, are distinctive and have acquired secondary meaning in the marketplace (*See*, Exhibit 9 Settlement Agreement section 1);
- c) That C&A would never contest the validity of the Marks in any proceeding (*See, Id.*);
- d) That C&A would cease all use of the HIPE mark in any form or capacity after August 30, 2013 (*See*, Exhibit 9 Settlement Agreement section 2);
- e) That C&A would sell any remaining HIPE branded inventory exclusively on Amazon.com by December 31, 2013, but all listings on

Amazon.com would not reference the HIPE mark in any form (*See*, Exhibit 9 Settlement Agreement section 2);

f) That use of any brand name in the Amazon.com listing would be approved by DGL (*See*, Exhibit 9 Settlement Agreement section 2); and

g) Various liquidated damages in the event of C&A's non-compliance (*See*, Exhibit 9 Settlement Agreement section 2).

24. After executing the Settlement Agreement, C&A continued to reference the HIPE brand and sell the Infringing Products on sites other than Amazon.com. *See, e.g.*, Exhibit 4.

25. DGL, through its counsel and members of its management, communicated numerous times with defendant C&A, demanding that C&A adhere to the terms of the Settlement Agreement; C&A audaciously ignored DGL's demands.

26. On November 26, 2013, DGL, through its counsel, reported to Amazon and eBay the infringing activity conducted on the websites of each.

27. In another act of great disregard for the Settlement Agreement, defendant C&A interviewed with Fast Company (the "Article"), a print and internet publication focusing, according to the "About Us" section of Fast company's website, fastcompany.com, "on innovation in technology, ethnomics

(ethical economics), leadership, and design.” The publication is “[w]ritten for, by, and about the most progressive business leaders . . .”

28. The Article titled “The Amazon Whisperer” parades defendant C&A’s infringing HIPE speaker while describing the Article’s author’s sub-par and even questionable customer service experience with C&A. A true and correct copy of the Article is attached hereto as Exhibit 10.

29. The Article references C&A’s approach to product development, praising their methods, as the owners pose for pictures.

30. C&A never disclosed to DGL that it’s owners and employees had participated in an upcoming article to be published in globally known business publication that would discuss the HIPE mark at length, feature it dominantly, and associate it with C&A.

31. The Article is featured in print in the December 2013/January 2014 issue of Fast Company and online from November 18, 2013.

32. DGL again notified C&A of its continued infringement and breach of the Settlement Agreement.

33. Despite having such notice defendant C&A has not ceased nor desisted from its wrongful conduct.

34. There is no association or affiliation of any kind between DGL and defendant C&A, and C&A's use of the HIPE mark is without DGL's consent or permission.

35. Defendant C&A's behavior is especially egregious in light of the fact that members of C&A's management were familiar with DGL as former customers.

36. Upon information and belief, C&A, will continue to commit the acts complained of herein, in addition to capitalizing on or destroying DGL's goodwill and reputation.

37. The acts complained of herein have caused, or are likely to cause, great and irreparable injury and damages to DGL. This irreparable injury includes, but is not limited to, a likelihood of confusion, mistake, and deception as to the true source, sponsorship, or affiliation of the goods offered by DGL.

38. Further irreparable injury and damages will result from C&A's continued conduct. DGL likely will be unable to ascertain the amount of compensation, if any, that could afford adequate relief for such continuing acts. DGL, therefore, has no adequate remedy at law to compensate for its injury and damage.

39. Defendant C&A knew or should have known, by the exercise of reasonable care, that use of the HIPE mark in connection with Infringing Product,

and with other related goods, would cause confusion, mistake, or deception among public consumers of those goods.

40. Upon information and belief, defendant C&A acts have been deliberately and intentionally carried out in bad faith, or with a reckless disregard for or willful blindness to DGL's rights, for the purpose of capitalizing on DGL's reputation.

41. Pursuant to 15 U.S.C. § 1117, DGL is entitled to recover the costs of this action. The intentional nature of defendant C&A's unlawful acts renders this an "exceptional case" entitling DGL to an award of attorneys' fee under 15 U.S.C. § 1117(a).

COUNT I

Trademark Infringement (15 U.S.C. § 1114)

42. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

43. Defendant C&A's use of the HIPE mark is likely to cause confusion, or to cause mistake, or to deceive as to origin, sponsorship, or approval of C&A's goods, services, or commercial activities, in violation of Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)).

44. The aforesaid infringement by C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights.

45. The aforesaid infringement by C&A has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to DGL's property and business.

46. Upon information and belief, the intentional nature of C&A's conduct, including their continuing infringement after notice, constitutes willful and malicious infringement of DGL's HYPE trademark under 15 U.S.C. § 1114, thus rendering the present case as an "exceptional" case as that term is employed in 15 U.S.C. § 1117.

47. DGL has no adequate remedy at law, is suffering irreparable harm and damage as a result of the aforesaid acts of C&A in an amount thus far not determined, and, unless C&A is restrained by this Court, will continue to suffer irreparable injury and damage to the good will associated with its HYPE mark.

COUNT II

Unfair Competition (15 U.S.C. § 1125(a))

48. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

49. C&A has knowingly and willfully used and continues to use the name HIPE, on the Infringing Product, which is likely to cause confusion, and has caused confusion amongst consumers, constituting false designations of origin or false descriptions or representations and is likely to cause DGL to lose their significance as indicators of origin. C&A's use of the HIPE mark constitutes unfair

competition, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

50. C&A's unauthorized acts are likely to divert customers away from DGL.

51. The aforesaid infringement by C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights as, upon information and belief, C&A had full knowledge of DGL's rights and the intentional nature of C&A's acts complained of above makes this an exceptional case under 15 U.S.C. § 1117(a).

52. The aforesaid infringement by C&A has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to DGL's property and business.

COUNT III

False Designation of Origin (15 U.S.C. § 1125(a))

53. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

54. As a result of DGL's widespread use of DGL's Marks, the Marks have achieved substantial goodwill, recognition, and reputation throughout the United States.

55. C&A's unauthorized use of the name HIPE constitutes use in commerce of a word, term, name, symbol or device or a combination thereof,

constituting a false designation of origin, a false and misleading deception, and a false and misleading representation that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of defendant C&A with DGL, and further is likely to cause confusion, mistake, or deception as to the origin, sponsorship or approval by DGL of C&A's use of the name and their website.

56. These acts by C&A constitute a violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

57. The aforesaid infringement by defendant C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights and the intentional nature of C&A's acts complained of above makes this an exceptional case under 15 U.S.C. § 1117(a).

58. The aforesaid infringement by defendant C&A in addition to DGL's lack of control over the quality of C&A's HIPE products has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to DGL's property and business.

COUNT IV

Cybersquatting (15 U.S.C. § 1125(d))

59. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

60. DGL's HYPE mark is distinctive as defined by 15 U.S.C. § 1125.

61. Defendant C&A's domain name for its website is, respectively, substantially identical to and indistinguishable from, DGL's HYPE mark, and therefore, C&A's domain name HIPEUSA.com (the "Domain") is confusingly similar to DGL's HYPE mark under 15 U.S.C. § 1125(d)(1)(A)(ii)(I).

62. Defendant C&A's registration and use of the Domain name violated the Lanham Act's Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

63. The aforesaid infringement by defendant C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights.

64. C&A has no right or legitimate interest in the domain, and C&A has no non-bad faith connection with the Domain, as the HIPE mark itself was adopted by C&A in bad faith.

65. C&A has and intended to divert internet customers to its own website when those customers searched for HYPE products.

66. C&A's actions harm the goodwill of DGL, tarnish DGL's reputation and the HYPE mark, and create a likelihood of confusion as to the source, sponsorship, affiliation, and endorsement of C&A's website by DGL.

67. DGL has no adequate remedy at law, is suffering irreparable harm and damage as a result of the aforesaid acts of C&A in an amount thus far not

determined, and, unless C&A is restrained by this Court, will continue to suffer irreparable injury and damage to the good will associated with its HYPE mark.

COUNT V

Trademark Infringement Under New Jersey Common Law

68. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

69. DGL's HYPE mark is distinctive by virtue of inherent distinctiveness and/or the acquired distinctiveness in the HYPE mark, through Plaintiff's efforts of promoting its goodwill and reputation in the relevant marketplace.

70. Defendant C&A knowingly and willfully have used and continue to use the name, HIPE, which is likely to cause confusion, and has caused confusion, in the relevant marketplace, with DGL's HYPE mark, in the State of New Jersey, and across numerous other states where DGL and Defendants conduct business.

71. Such conduct on the part of C&A has caused and will continue to cause irreparable injury and damage to DGL, its HYPE mark, and its good will and reputation, for which DGL has no adequate remedy at law.

COUNT VI

Unfair Competition (N.J.S.A. §§ 56:4-1 et seq.)

72. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

73. Defendant C&A's unauthorized use of the HIPE mark in advertising constitutes acts of unfair competition through C&A's appropriation for their own

use of the name, brand, trademark, reputation, and goodwill of DGL in violation of N.J.S.A. §§ 56:4-1 *et seq.*

74. The aforesaid infringement by defendant C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights.

75. Such conduct on the part of C&A has caused and will continue to cause irreparable injury and damage to DGL, its HYPE mark, and its good will and reputation, for which DGL has no adequate remedy at law.

COUNT VII

Deceptive Acts And Practices In Violation Of The Common Law Of The State Of New Jersey

76. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

77. Defendants C&A's unauthorized use of the HIPE mark in advertising constitutes deceptive trade practice in violation of the common law of the State of New Jersey.

78. The aforesaid infringement by defendant C&A was committed willfully, knowingly, maliciously, and in conscious disregard of DGL's rights.

79. The aforesaid infringement by defendant C&A has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to DGL's property and business.

COUNT VIII

Tortious Interference With Prospective Economic Advantage

80. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

81. Plaintiff DGL has a reasonable expectation of an economic advantage for any person seeking to do business with DGL, and relies upon laws which prevent malicious and intentional actions by a competitor attempting to confuse such would-be customers into doing business with them rather than DGL.

82. Upon information and belief, defendant C&A have knowingly and intentionally misled customers of DGL into falsely believing C&A is affiliated with DGL, and that their separate businesses are one entity, by virtue of the knowing use of a confusingly similar brand name.

83. Defendants C&A's actions were committed with malice, willfulness and the intent to interfere with DGL's expectation to do business with persons seeking to do business with DGL, without reasonable and lawful justification or excuse.

84. But for the C&A's actions, Plaintiff had more than a reasonable expectation that every prospective consumer who showed interest in seeking consumer electronics, namely speakers and power sources, from DGL would have paid DGL for such products.

85. Defendant C&A's actions transgress generally accepted standards of common morality and law.

86. The Defendants C&A will, if not preliminarily and permanently enjoined by the Court, continue to tortuously interfere with DGL's prospective economic advantage, and causing DGL immediate and irreparable harm, damage and injury.

87. As a result of the defendant C&A's actions, DGL has suffered injury, including irreparable injury, and damages, including lost profits, reasonable royalties, and other damages as set forth herein.

COUNT IX
Breach Of Contract

88. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

89. At all times relevant to this action, Defendant C&A contracted with DGL in the Settlement Agreement that C&A would: (i) cease all use of the HIPE mark in any form or capacity after August 30, 2013; (ii) sell any remaining HIPE branded inventory exclusively on Amazon.com by December 31, 2013, but all listings on Amazon.com would not reference the HIPE mark in any form; and (iii) seek DGL's approval for the use of any brand name within the Amazon.com listings.

90. Shortly after entering into the Settlement Agreement with DGL, Defendant C&A breached the Settlement Agreement by continuing to use the HIPE mark, continuing sell HIPE brand products through mediums other than Amazon.com and failing to seek DGL's approval for the use of any other brand name.

91. As a result of Defendant's C&A's breach of the Settlement Agreement, DGL has suffered and will suffer damages.

COUNT X

Breach Of Implied Covenant Of Good Faith And Fair Dealing

92. DGL repeats and alleges each and every allegation set forth in each of the foregoing paragraphs as if fully set forth herein.

93. The Settlement Agreement is subject to an implied covenant of good faith and fair dealing by which Defendant C&A promised to fully cooperate in the limiting the damage caused to DGL by C&A's use of the HIPE mark on the same or substantially similar products to those products bearing DGL's HYPE mark.

94. Defendant C&A breached the implied covenant of good faith and fair dealing with regard to DGL by continuing to sell HIPE branded products, continuing to create listings incorporating the HIPE mark, failing to sell exclusively on Amazon.com, and failing to seek DGL's approval with regards to any other brand names used to sell the Infringing Products.

95. As a proximate cause of Defendant C&A's breach of the covenant of good faith and fair dealing, DGL has suffered and continues to suffer damages.

Prayer For Relief

WHEREFORE, Plaintiff DGL respectfully prays for the following:

1. A preliminary and permanent injunction restraining defendant C&A, its officers, agents, servants, employees, attorneys, and those in active concert or participation with them, or any of them who receive actual notice of the order by personal service or otherwise:
 - a. From using DGL's HYPE mark or any colorable imitation thereof, or any other mark, the use of which is likely to cause confusion, or cause mistake, or to deceive including but not limited to HIPE or variants thereof;
 - b. From injuring the commercial reputation, renown, and goodwill of DGL or DGL's HYPE mark;
 - c. From using or reproducing any word, term, name, symbol, or device, or any combination thereof, on any product or in connection with any service that confuses or falsely represents or misleads, is calculated to confuse, falsely represent, or mislead, or that has the effect of confusing, falsely representing, or misleading, that the products, services, or activities of

Defendant or another are in some way connected with plaintiff

DGL, or is sponsored, approved, or licensed by plaintiff DGL

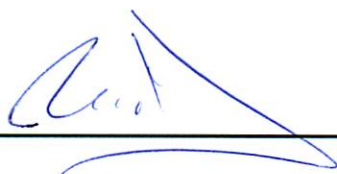
- d. From using, in connection with the offering for sale or sale of any services and/ or products, any false designation, description or representation stating or implying that plaintiff DGL is the origin of, has authorized, or is connected with such services or goods;
- e. From displaying any materials using the phrase HIPE or any colorable imitation thereof, or any other mark, the use of which is likely to cause confusion, or cause mistake, or to deceive in relation to plaintiff DGL's HYPE mark in or on any property, real or otherwise;
- f. Take all steps necessary to remove the name HIPE or any other name, mark or symbol, likely to cause confusion with plaintiff DGL's HYPE mark, from any brochures, advertisements, or any other materials printed or to be printed or distributed (including internet distribution);
- g. From unfairly competing with plaintiff DGL in any way whatsoever;

- h. Transfer the domain name "www.hipeusa.com," as well as any others that may be discovered to be similarly infringing, to plaintiff DGL.
2. An order directing C&A to place corrective advertising in newspapers and trade publications in all worldwide markets for its products and services for restoring the lost good will in DGL's HYPE mark resulting from C&A's infringement, false designation of origin, and unfair competition;
3. An award of damages to DGL under the Lanham Act, and in particular pursuant to 15 U.S.C. § 1117(a), of up to three times the damages suffered by DGL and three times the profits earned by the defendants;
4. An order that defendant C&A specifically perform the Settlement Agreement by ceasing all use of the HIPE mark in any form;
5. An award to DGL of compensatory, consequential, and/or incidental damages;
6. An award to DGL of treble, exemplary, and/or punitive damages;
7. An award to DGL of its reasonable attorney fees and the costs of this action;

8. Prejudgment and postjudgment interest on the above monetary awards; and
9. Such other and further relief as this Court deems equitable and just.

Respectfully submitted,

Date: December 23, 2013

By:  _____

Uri Dallal, Esq.
Dallal Firm, PC
2500 Plaza 5
Harborside Financial Center
Jersey City, New Jersey 07311
Tel: 732 650 1551
Fax: 347 514 9995
uri@dallalfirm.com
*Attorneys for Plaintiff DGL Group,
Ltd.*

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither Plaintiff nor Plaintiff's attorney is aware of any other action pending in any court, or any pending arbitration or administrative proceeding, to which this matter is subject.

Respectfully submitted,

Date: December 23, 2013

By:  _____

Uri Dallal, Esq.
Dallal Firm, PC
2500 Plaza 5
Harborside Financial Center
Jersey City, New Jersey 07311
Tel: 732 650 1551
Fax: 347 514 9995
uri@dallalfirm.com
*Attorneys for Plaintiff DGL Group,
Ltd.*

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 7.1

The undersigned hereby certifies, pursuant to Local Civil Rule 7.1, that with respect to the matter in controversy herein, Plaintiff does not have any parent corporation, nor have any publicly held corporation owning 10% or more of its stock.

Respectfully submitted,

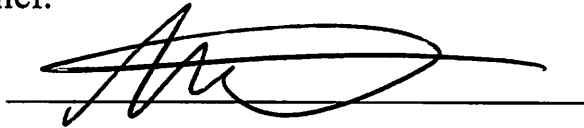
Date: December 23, 2013

By: 

Uri Dallal, Esq.
Dallal Firm, PC
2500 Plaza 5
Harborside Financial Center
Jersey City, New Jersey 07311
Tel: 732 650 1551
Fax: 347 514 9995
uri@dallalfirm.com
*Attorneys for Plaintiff DGL Group,
Ltd.*

VERIFICATION

I, Victor Sardar, hereby verify that all facts stated herein are based upon my personal knowledge, or are otherwise true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'Victor Sardar', is written over a horizontal line.

Victor Sardar
Vice President
DGL Group, Ltd.

EXHIBIT

1



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Dec 10 03:20:37 EST 2013

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At: OR [Jump](#) to record: **Record 11 out of 14**

[TSDR](#)
[ASSIGN Status](#)
[TTAB Status](#)
(Use the "Back" button of the Internet Browser to return to TESS)

HYPE

Word Mark HYPE
Goods and Services IC 009. US 021 023 026 036 038. G & S: MP3 players with earphones and MP4 players with earphones. FIRST USE: 20080101. FIRST USE IN COMMERCE: 20080101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77541578
Filing Date August 7, 2008
Current Basis 1A
Original Filing Basis 1B
Published for Opposition February 3, 2009
Registration Number 3734932
Registration Date January 5, 2010
Owner (REGISTRANT) **DGL Group, Ltd.** CORPORATION NEW YORK 195 Raritan Center Parkway Edison NEW JERSEY 08837

(LAST LISTED OWNER) PNC BANK, NATIONAL ASSOCIATION, AS AGENT INC. ASSOCIATION
UNITED STATES TWO TOWER CENTER BOULEVARD EAST BRUNSWICK NEW JERSEY 08816

**Assignment
Recorded** ASSIGNMENT RECORDED

**Attorney of
Record** Robert Haroun

Type of Mark TRADEMARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT

2



EXHIBIT

3

[Try Prime](#)[Uri's Amazon.com](#)[Today's Deals](#)[Gift Cards](#)[Sell](#)[Help](#)Shop by
Department ▾

Search

Electronics ▾

Go

Hello, Uri
Your Account ▾Try
Prime ▾**0**
Cart ▾**Wish**
List ▾**MP3 Players & Accessories**[Best Sellers](#)[New Arrivals](#)[MP3 Players](#)[Accessories](#)[Portable Speakers](#)[Amazon MP3 Store](#)[Trade-In](#)[All Electronics](#)**More Amazon.com Search Results for "hipe speaker"**[See all 67 results](#)**Hipo By Ivation HIP-400W Waterproof Wireless Bluetooth Shower Speaker...**Buy new: ~~\$99.99~~ **\$49.99**8 Used & new from **\$44.99**

(416)

**Abco Tech Waterproof Wireless Bluetooth Shower Speaker & Handsfree sp...**Buy new: ~~\$69.99~~ **\$29.99**9 Used & new from **\$18.66**

(45)

**ShowerBooster Bluetooth Wireless Waterproof Shower Speaker & Handsfre...**Buy new: ~~\$89.99~~ **\$58.95**3 Used & new from **\$54.57**

(18)

[Click to open expanded view](#)**Hipe HIP-400BK Waterproof Bluetooth Shower Speaker & Speakerphone (Black)**by **Hipe**

416 customer reviews

| [11 answered questions](#)List Price: ~~\$99.99~~Price: **\$49.99 & FREE Shipping.** [Details](#)You Save: **\$50.00 (50%)****In Stock.**

Ships from and sold by Amazon.com.

Color: **Black**

- Compatible with any Bluetooth media player or phone - works great with apple iPhone 5 Series, Android Devices and phones, Samsung S-Voice, Google Music, Pandora and all other audio APPs on your android or iPhone.
- 2 Key features were updated 1: The battery was upgraded. 2: The phone volume is now leveled with the music volume.
- Auto Pairing Feature: Pairs your device with the Hipe speaker automatically when it is in range of the speaker.
- Waterproof (Rated IPX6) Can withstand powerful water jets - Built in Echo cancellation and Noise suppression.
- Run time: up to 25 hours; (If the unit has not been used for more than 10 days, please charge it before using)

6 new from **\$49.99**5 used from **\$42.45****Countdown to Black Friday Deals in MP3 Players, Portable Speakers & Accessories****BLACK
FRIDAY
COUNT
DOWN**Check out early Black Friday deals on MP3 players, portable speakers, accessories, and more. [Shop now](#)**Buy new:** **\$49.99**Qty: **1** ▾ ▹[Add to Cart](#)

or

[Sign in](#) to turn on 1-Click ordering.**Buy used:** **\$42.45**[Add to Wish List](#)Trade in your item
Get up to a **\$13.85**
Gift Card.[Trade in](#)[Learn More](#)**More buying choices**

DBROTH

\$49.99 & FREE Shipping.[Details](#)[Add to Cart](#)

Apko Gifts

\$59.95 & FREE Shipping.[Details](#)[Add to Cart](#)

Widget One, LLC

\$59.95 & FREE Shipping.[Details](#)[Add to Cart](#)11 used & new from **\$42.45**

Have one to sell?

[Sell on Amazon](#)[Share](#)**Special Offers and Product Promotions**Color: **Black**

- **Buy Used and Save:** Buy a Used "Hipe HIP-400BK Waterproof Bluetooth Shower Speaker..." and save 57% off the \$99.99 list price. Buy

Frequently Bought Together



Price for all three: **\$67.95**

[Show availability and shipping details](#)

- ☒ **This item:** Hipe HIP-400BK Waterproof Bluetooth Shower Speaker & Speakerphone (Black) **\$49.99**
- ☒ **Command Bathroom Hook with Water-Resistant Strips, 1-Hook, 2-Strip** **\$4.97**
- ☒ **Deluxe Shave Well Fog-Free Shower Mirror - #1 Selling Shower Mirror on amazon.com - 33% Larger Than Our ...** **\$12.99**

Customers Who Bought This Item Also Bought



Command Bathroom Hook with Water-Resistant Strips, 1-Hook, 2-Strip

(97)

\$4.97



Febreze Stick and Refresh Clean Zest Air Freshener Starter Kit

(49)

\$2.92



Everlast 100-Pound Nevatear Heavy Bag (Traditional Logo)

(23)

\$93.24



SoundBot SB240 Red Bluetooth Headset for Music Streaming & HandsFree Calling for ...

(513)

\$25.01



Deluxe Shave Well Fog-Free Shower Mirror - #1 Selling Shower Mirror on amazon.com ...

(375)

\$12.99

Product Specifications

Color: **Black**

Brand Name

Hipe

Color Name

Black

Technical Details

Color: **Black**

Brand Name: Hipe

Model: HIP-400BK

Media Type: MP3

Color Name: Black

Product Details

Color: **Black**

Product Dimensions: 8 x 1.8 x 3.5 inches ; 14.4 ounces

Shipping Weight: 1 pounds ([View shipping rates and policies](#))

Shipping: Currently, item can be shipped only within the U.S.

ASIN: B005Z3GINK

Item model number: HIP-400BK

Batteries 1 Lithium ion batteries required. (included)

Average Customer Review: [\(416 customer reviews\)](#)

Amazon Best Sellers Rank: #2,170 in Cell Phones & Accessories ([See Top 100 in Cell Phones & Accessories](#))

Date first available at Amazon.com: October 24, 2011

Did we miss any relevant features for this product? [Tell us what we missed.](#)

Would you like to [update product info](#), [give feedback on images](#), or [tell us about a lower price](#)?

Product Description

Color: **Black**

This Hipe waterproof speaker will change the way you bathe and shower forever! You can now listen to crystal clear audio streaming from any

Bluetooth enabled device to the Wireless Speaker. In addition to enjoying your music and streaming audio, phone calls can also be answered from your Hipe speaker. The speaker will ring upon receiving an incoming phone call, If the call is answered the audio will fade out and when the call has ended the audio will resume playing where it left off. (iPhone Siri and Samsung S-Voice can also be activated by pressing the CALL button to play specific songs, take notes, make calls and plan schedules.) You can also stream media from your android via any audio APP like Pandora, Google Music and Music Hub. Features a full control panel that lets you remotely Play/Pause, Next/Back and Receive/Reject phone calls.

NOTICE: This Speaker is designed for use in wet locations and can withstand high pressure water jet, **BUT IT SHOULD NOT BE IMMERSSED IN WATER**

Features :

- Waterproof - Rated IPX6 - Can withstand powerful water jets.
- Bluetooth V2.1 + EDR support A2DP, HSP, HFP, and AVRCP.
- Echo cancellation and Noise suppression.
- Rechargeable power bank inside, you can power your music device.
- Run time: up to 25 hours.
- Auto Pairing Feature: Pairs your device with the Hipe speaker automatically when it is in range of the speaker.
- Compatible with any Bluetooth media player, phone, iPod, iPad, Android Devices, Samsung S-Voice, Google Music, Pandora and all other media APPS.
- 2 features where updated 1: The battery was upgraded. 2: The phone volume is now leveled with the music volume.

Specs

- Dimensions: (WxHxD) 8 x 3.5 x 1.8", with handle height is 6 1/8"
- Weight: 14 oz.

What Other Items Do Customers Buy After Viewing This Item?



Splash Shower Tunes - Waterproof Remote Control Iphone, Smartphone Speaker (Waterproof)

(19)

\$23.77



Splash Shower Tunes (Green) - Waterproof Bluetooth Shower Speakers and Remote

(19)

\$22.90



Abco Tech Waterproof Wireless Bluetooth Shower Speaker & Handsfree speakerphone - - Compatible with all ...

(46)

\$29.99



Splash Shower Tunes (Pink) - Bluetooth Waterproof Speaker and Remote

(19)

\$24.00

› [Explore similar items](#)

Customer Questions & Answers

[See questions and answers](#)

Customer Reviews

(416)

3.4 out of 5 stars

Sound quality is very good.

5 star	168
4 star	85
3 star	24
2 star	41
1 star	98

Matthew J. Ybarra

Customer service is great and stands behind the product, so if you have any issues just send an email to the support address listed on the instructions.

Cons: The battery does not seem to hold a charge for more than a couple days, even though its only used for a few minutes a day.

Andrew

flyers257

[See all 416 customer reviews](#)

Most Helpful Customer Reviews

153 of 169 people found the following review helpful

Excellent product overall compared to competition

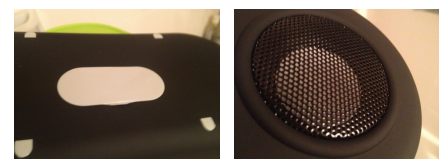
By [C C](#) on December 1, 2011

Color Name: Black [Amazon Verified Purchase](#)

Cons:

If you plan on using this outside of the shower as well, don't expect Bose quality sound. It's made for the shower and sounds excellent, loud, and clear with the "acoustics" of a bathroom and running

Product Images from Customers



[See all 4 customer images](#)

water. This phenomenon is similar to the one in which people singing in the shower are convinced they can be the next Rihanna or John Legend (see first three weeks of American Idol auditions and/or Simon Cowell clips on Youtube).

Can't remove the handle which is not a big deal. Would be nice if it offered suction as an option/accessory so location of speaker isn't bound to either the shower head, soap holder, or towel rack region (FYI, handle is flexible material).

Googling, or however you spell it, "Hipe Bluetooth Speaker" does not yield an official Hipe Twitter, Facebook, or Website but the product packaging does say that HipeUSA.com is the Official Website for this product. The website though is quite barren at this point in time.

Pros:

Does EVERYTHING it says it does as advertised. From my experience, only 40% of products not sold by Apple can claim that. Currently, I don't see a viable competitive product as far as what this one has to offer.

For iPhone 4S users like myself, pressing the Call button activates Siri so essentially the speakers will port Siri commands to your iPhone and he/she will read back responses through the speaker. So yes, you can now listen to the last text message you got, send a response, and set a reminder to pick your friend up from the airport this weekend all while taking a shower and not touching your iPhone in the process. No, you cannot see Siri's response to directions to the airport on the Hipe speakers. [Read more ›](#)

[5 Comments](#) Was this review helpful to you?

57 of 64 people found the following review helpful

Amazing Product while it works

By [Mumrahte](#) on October 29, 2012

Color Name: Black [Amazon Verified Purchase](#)

I had just put in a new shower into my bathroom and while I had included sound into the exterior because of the sealed shower it wasn't easy to hear especially with the steam shower running.

I had been on the lookout for a work around. Found this item as pretty much the only reasonably priced waterproof bluetooth speaker.

I hemmed and hawed about purchasing it for about a month or so especially with the lackluster reviews over quality control.

Finally bit the bullet and bought it only to be delightfully surprised It was way louder then I had anticipated and even would kick off my android phones voice actions programs (I have an S3 so it kicks off S-voice Samsung's siri competitor). Which allows me some control from inside the shower. The mike seems to work ok for this type of usage. Call quality on the other hand seems to be lacking only tried it maybe twice just to check it out but with my shower being particularly echo prone I would be surprised if any mic could handle the acoustics.

Other thoughts:

This thing is loud love that I can easily hear it with the loudness of my steam shower without it even cranked all the way up

Battery Life is nice and long.

Charging port for other devices seems silly. (Would be nice if I was going to use it for camping or something).

About 2-3 months after I purchased it I went to plug in the charging cord. And sadly the charging port came loose and fell into the cavity of the speaker. At this point it was unusable after it ran out of battery. This was disappointing as it is a main gripe mentioned in other reviews.

I was worried with the support based on how sparse the website is. [Read more ›](#)

[2 Comments](#) Was this review helpful to you?

26 of 31 people found the following review helpful

Garbage

By [MisterEd](#) on December 14, 2011

Color Name: Black [Amazon Verified Purchase](#)

2 bad out of the box. Won't try a third time. First one wouldn't connect to anything and now the second one when I plugged the power adapter into it the jack fell inside the unit.

[1 Comment](#) Was this review helpful to you?

Most Recent Customer Reviews

Great little device!

While not as spiffy looking as the Kohler bluetooth shower speaker, this is quite a bit less expensive, and rather more versatile. [Read more](#)

Published 6 hours ago by M. Meyer

Waste of money. Don't buy it. Won't work the 2nd time that I use.

Waste of money. Don't buy it. Won't work the 2nd time that I use.

Serious problem with charging!

If you can't charge it, it worth nothing.

Published 2 days ago by Wang Gong Yu

Best Shower Radio

Very good volume for its size, more than enough to fill up your shower. I'll likely also be using this by the pool and lake. The set up was easy and straight forward. [Read more](#)

Published 5 days ago by Jason

Broken power port after less than 10 uses

The USB port that you use to charge the speaker broke (pushed into the device itself where I can't retrieve it) after less than 10 recharges. [Read more](#)

Published 6 days ago by Kip

Battery doesn't last very long

Battery doesn't last very long. Used it twice for a half hour over a week and it was done. Other than that it is good. [Read more](#)

Published 7 days ago by Darrell Turner

Makes getting ready for work a blast!

This is great for a shower! It's really loud. Some reviewers have posted about bad battery life. If you just shut it off (manual switch in the back) when you're done, it lasts a... [Read more](#)

Published 8 days ago by Jason

Well worth the money.

I have had this speaker for a few months now and today i decided to go back to this product and buy 3 for holiday gifts. i was very surprised to see all of these negative reviews. [Read more](#)

Published 11 days ago by Ava Brooks

Great Speaker - despite other negative reviews

So I would like to quell a lot of those negative reviews out there for this product and say that this thing is awesome. [Read more](#)

Published 11 days ago by DH

Music whenever wherever

This is a lovely product. It is easy to use - even for someone not very technically. Used it today and I loved it. I would recommend it for everyone. [Read more](#)

Published 14 days ago by gosh p.

very poor

The product will not charge so I have no idea how it

23 of 28 people found the following review helpful

Total Garbage!!!

By [Omnia](#) on December 17, 2011

Color Name: Black **Amazon Verified Purchase**

Dont waste your time buying this...I bought it twice and twice it failed....good idea but product is very poorly made. I had the same problem as the previous review...The first one the plug fell inside the unit. Now the second one...wont charge at all. Again take heed and do not purchase this unit...

[Comment](#) Was this review helpful to you?

16 of 19 people found the following review helpful

Broken Product

By [Jason](#) on December 21, 2011

Color Name: Black **Amazon Verified Purchase**

Listen to the reviews telling you not to buy this. I received mine and it would not charge, I'd be surprised if it contained a battery at all. No support either.

[Comment](#) Was this review helpful to you?

12 of 14 people found the following review helpful

Broke the first day I got it

By [sadorderer](#) on January 13, 2013

Color Name: Black **Amazon Verified Purchase**

USB connection broke the first day I used it after trying to unplug it from the wall. So it only lasted long enough to use for 1 charge.

So I cant use it anymore. Poor quality.

I want my money back.

[Comment](#) Was this review helpful to you?

9 of 10 people found the following review helpful

Won't hold a charge--which makes it essentially useless.

By [wcg70](#) on August 18, 2013

Color Name: Black

I purchased this because it was exactly what I was looking for...a way to enjoy music in the shower--including controlling my iphone remotely.

And at that, it was great! The sound was decent, it connected easily through bluetooth, and the controls worked.

BUT..and a really big BUT...is that the battery would die after each use...which meant it had to be charged after every shower...which is crazy.

I sent it back. Amazon was great in handling the return.

[Comment](#) Was this review helpful to you?

8 of 10 people found the following review helpful

Not a very good experience.

By [N. A. Trilling](#) on July 30, 2013

Color Name: White **Amazon Verified Purchase**

The concept of the product is a good one, but it is not ready for prime time. The first one I received would not hold a charge. I sent it back and had to complain several times before I got a response from the company. They sent me another unit, but it was one returned by someone else, stuffed in an envelope, missing components and without documentation. Again I contacted them and Amazon. They finally sent me a third unit, also with problems---the charging plug was wobbly and even when connected, was not able to charge the battery after 7 hours. I decided to cut my losses and return it also.

I have to say that Amazon was amazing through the whole experience and did everything to make sure I got satisfaction. They really went the extra mile, I was astonished.

[1 Comment](#) Was this review helpful to you?

[See all 416 customer reviews \(newest first\)](#)

would perform. Very disappointed. The companies quality control must be very poor.
Published 16 days ago by Wapek

Search Customer Reviews

☒ Only search this product's reviews

Write a customer review

Want to discover more products? You may find many from [steam showers](#) shopping list.

Feedback

- ▶ If you have a question or problem, visit our [Help pages](#).
- ▶ Would you like to [update product info](#), [give feedback on images](#), or [tell us about a lower price](#)?
- ▶ If you are a seller for this product and want to change product data, click [here](#) (you may have to sign in with your seller id).

Your Recently Viewed Items and Featured Recommendations



Get to Know Us

[Careers](#)
[Investor Relations](#)
[Press Releases](#)
[Amazon and Our Planet](#)
[Amazon in the Community](#)

Make Money with Us

[Sell on Amazon](#)
[Become an Affiliate](#)
[Advertise Your Products](#)
[Independently Publish with Us](#)
 ▶ [See all](#)

Amazon Payment Products

[Amazon.com Rewards Visa Card](#)
[Amazon.com Store Card](#)
[Shop with Points](#)
[Credit Card Marketplace](#)
[Amazon Currency Converter](#)

Let Us Help You

[Your Account](#)
[Shipping Rates & Policies](#)
[Amazon Prime](#)
[Returns & Replacements](#)
[Manage Your Kindle](#)
[Help](#)

amazon.com

[Australia](#) [Brazil](#) [Canada](#) [China](#) [France](#) [Germany](#) [India](#) [Italy](#) [Japan](#) [Mexico](#) [Spain](#) [United Kingdom](#)

[6pm](#)
Score deals
on fashion brands

[AbeBooks](#)
Rare Books
& Textbooks

[AfterSchool.com](#)
Kids' Sports, Outdoor
& Dance Gear

[Alexa](#)
Actionable Analytics
for the Web

[AmazonFresh](#)
Groceries & More
Right To Your Door

[Amazon Local](#)
Great Local Deals
in Your City

[AmazonSupply](#)
Business, Industrial
& Scientific Supplies

[Amazon Web Services](#)
Scalable Cloud
Computing Services

[Askville](#)
Community
Answers

[Audible](#)
Download
Audio Books

[BeautyBar.com](#)
Prestige Beauty
Delivered

[Book Depository](#)
Books With Free
Delivery Worldwide

[Bookworm.com](#)
Books For Children
Of All Ages

[Casa.com](#)
Kitchen, Storage
& Everything Home

[CreateSpace](#)
Indie Print Publishing
Made Easy

[Diapers.com](#)
Everything
But The Baby

[DPRReview](#)
Digital
Photography

[East Dane](#)
Designer Men's
Fashion

[Fabric](#)
Sewing, Quilting
& Knitting

[IMDb](#)
Movies, TV
& Celebrities

[Junglee.com](#)
Shop Online
in India

[Kindle Direct Publishing](#)
Indie Digital Publishing
Made Easy

[Look.com](#)
Kids' Clothing
& Shoes

[MYHABIT](#)
Private Fashion
Designer Sales

[Shopbop](#)
Designer
Fashion Brands

[Soap.com](#)
Health, Beauty &
Home Essentials

[Vine.com](#)
Everything
to Live Life Green

[Wag.com](#)
Everything
For Your Pet

[Warehouse Deals](#)
Open-Box
Discounts

[Woot!](#)
Discounts and
Shenanigans

[Yoyo.com](#)
A Happy Place
To Shop For Toys

[Zappos](#)
Shoes &
Clothing

[Conditions of Use](#) [Privacy Notice](#) [Interest-Based Ads](#) © 1996-2013, Amazon.com, Inc. or its affiliates

EXHIBIT

4



Shop by category

All Categories

Se

Back to search results | Listed in category: Consumer Electronics > Portable Audio & Headphones > iPod, Audio Player Accessories > Audio Docks & Mini Speakers

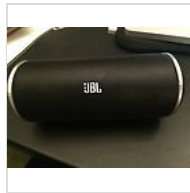
Bidding has ended on this item. The seller has **relisted this item** or one like this.

More chances to get what you want

Feedback

iLUV MOBIAR
BLUETOOTH STEREO...**\$24.99**

0 bids

JBL Flip Wireless
Bluetooth Portable...**\$65.00**

0 bids

Free shipping

Blue Waterproof
Wireless Bluetooth...**\$19.89**

Buy It Now

Free shipping

Pink Waterproof
Wireless Bluetooth...**\$19.89**

Buy It Now

Free shipping

Elegant New Mini
Speakers with...**\$21.99**

1 bid

Free shipping

More from the same seller

Feedback

Sony MDR-V6 Monitor
Series Headphones...**\$54.95**

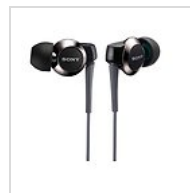
0 bids

Free shipping

JVC Over-the-Ear
Comfortable Stereo...**\$19.95**

0 bids

Free shipping

Sony MDR-EX210B/BLK
Earbud Style...**\$19.95**

0 bids

Free shipping

Sony MDR-AS20J Active
Style Headphones...**\$9.95**

0 bids

Free shipping

DBTech Big Over
Digital Red LED**\$54.95**

1 bid

Free shipping

Sponsored Links

Bluetooth Speaker and S
peakerphone**\$78.00**

Lands End Business ...



Big Jambox Bluetooth...

\$299.95

+ \$11.95 Shipping

HSN



Big Jambox Bluetooth...

\$299.95

+ \$11.95 Shipping

HSN

Hype ALUMINUM HY-600
0-BLK BLUETOOTH...~~\$49.99~~ **\$47.49**

+ \$6.95 Shipping

Sears

Hype ALUMINUM
0-BLU BLUETOOC~~\$49.99~~ **\$47.49**

+ \$6.95 Shipping

Sears



Hipe Waterproof Bluetooth Stereo Shower Speaker & Handsfree speakerphone

Item condition: **New other (see details)**

Ended: Nov 27, 2013 08:09:15 PST

Starting bid: **US \$44.95** [0 bids]Shipping: **FREE** Standard Shipping | See details

Item location: Ridgefield Park, New Jersey, United States

Ships to: United States and many other countries | See details

Seller information

db_roth (84862) me

99.3% Positive feedback

☐ Follow this seller

See other items

Visit store: DB Roth Store



Delivery: Estimated within 4 business days

Payments: **PayPal** | [See details](#)

Returns: **Hassle-free returns** | [Learn more](#)
14 days money back or item exchange, you pay return shipping, 10% restocking fee may apply

Guarantee: | [Learn more](#)

Get the item you ordered or get your money back.



Have one to sell? [Sell it yourself](#)

Description

[Shipping and payments](#)

Price

eBay item number

Seller assumes all responsibility for this listing.

Item specifics

Condition: New other (see details): A new, unused item with absolutely no signs of wear. The item may be missing the original packaging, ... [Read more](#)

Compatible Brand: Universal

Features: Bluetooth Wireless

Type: Portable Speaker System

Brand: HIPE

DB Roth Stores

Visit my eBay store

Store Categories

[Store home](#)

[Cameras & Photo](#)

- [Lenses & Filters](#)
- [Camera & Photo Accessories](#)
- [Tripods & Supports](#)

[Home & Garden](#)

- [Kitchen, Dining & Bar](#)
- [Yard, Garden & Outdoor Living](#)
- [Housekeeping & Organization](#)

[Consumer Electronics](#)

- [Portable Audio & Headphones](#)
- [TV, Video & Home Audio](#)
- [Gadgets & Other Electronics](#)

Hipe Waterproof Bluetooth Stereo Shower Speaker & Handsfree speakerphone For Streaming Audio and answering your Phone - Black - Compatible with iPhone 5 Siri

Click an Image to Enlarge



Item Description

Like new open box looks great.

- In this version we updated two key features. We fixed the battery charging issue that was a problem in the

previous shipment and we adjusted the phone volume to be leveled with the music volume

- Auto Pairing Feature: Pairs your device with the Hipe speaker automatically when it is in range of the speaker.
- Waterproof (Rated IPX6) Can withstand powerful water jets - Built in Echo cancellation and Noise suppression
- Rechargeable power bank inside, you can Recharge your music device from this Speaker
- Run time: up to 25 hours. (If the unit has not been used for more than 10days, please charge it before using)

In this version we updated two key features. We fixed the battery charging issue, and we adjusted the phone volume to be leveled with the music volume.

The Hipe speaker Works with with iPhone 5 Siri. Just hit the phone button on the speaker and you can ask siri to play specific albums or songs or you can Tell Siri to take notes, make calls and plan schedules.

This Hipe portable waterproof speaker will change the way you bathe and shower forever! You can now listen to crystal clear audio streaming from any Bluetooth enabled device to this portable Speaker. In addition to enjoying your music or any streaming audio, phone calls can be answered from your Hipe speaker! Your Speaker will ring upon receiving an incoming phone call. Once the call is answered the streaming audio will fade out and when the phone call has ended the audio will resume playing on your Hipe speaker. Features a full control panel that lets you remotely Play/Pause, Volume Up/Down, Forward-Next/Back-Previous and Receive/Reject phone calls. You can also remotely Access voice dialing (For voice dialing Enabled device)

Please be aware that although the Waterproof Bluetooth Speaker was designed for use in wet locations and is rated IPX6 and can withstand water spray or even high pressure water jet, **IT SHOULD NOT BE IMMERSSED IN WATER**

Features

- Waterproof - Rated IPX6 - Can withstand powerful water jets.
- Bluetooth V2.1 + EDR support A2DP, HSP, HFP, and AVRCP.
- Echo cancellation and Noise suppression.
- Rechargeable power bank inside, you can power your music device.
- Run time: up to 25 hours. (If the unit has not been used for more than 10days, please charge it before using)
- Auto Pairing Feature: Pairs your device with the Hipe speaker automatically when it is in range of the speaker.

Specs

- Dimensions: (WxHxD) 8 x 3.5 x 1.8", with handle height is 6 1/8"
- Weight: 14 oz.

HIP400BKYW

STORE POLICIES

- We will not ship any orders out of the USA.
- We ship to the continental United States as well as Alaska, Hawaii, APO /FPO Military Addresses, Puerto Rico & other US protectorates, As shipping to some of these locations may result in additional fees, we strongly recommend using the eBay shipping calculator (in the tab above) before committing to purchase the item.
- Please be advised that shipping to certain areas may result in additional charges from the carrier
- Our shipping rates include the cost of shipping, handling and packaging.
- We are not responsible for undeliverable addresses.
- Items that are reshipped after being returned due to a wrong or undeliverable address will be charged an additional shipping fee
- Items are shipped within 1 - 2 business days of your payment clearing.
- Once your item ships, a confirmation e-mail will be sent to the e-mail address linked to your eBay account

Powered by
channeladvisor

Questions and answers about this item

No questions or answers have been posted about this item.

[Ask a question](#)

See what other people are watching

[Feedback](#)



WOW! NEW PB Teen
Rockin Plush Speak...

\$250.00

Buy It Now
Free shipping



Life n Soul BM208-G
Bluetooth Stereo...

\$49.99

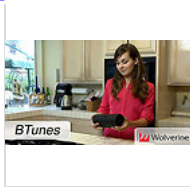
Buy It Now
Free shipping



Life n Soul BM208-O
Bluetooth Stereo...

\$49.99

Buy It Now
Free shipping



Wolverine BT100FT
Btunes Super Range...

\$69.07

Buy It Now
Free shipping



Innovative Tachr
ITSB-203B Blue!

\$59.99

Buy It Now
Free shipping



AdChoice

[Back to search results](#)

Related buying guides : [Portable Bluetooth Speakers Buyers Guide](#), [Top 5 Universal Audio Docks](#), [Top 10 Things to Consider When Buying a Portable Speaker System](#), [Top 12 Home D](#)
[Top 7 Wireless Computer Speakers](#)

More to explore : [Car Stereo](#), [Bluetooth Stereo Speakers](#), [Bluetooth Car Stereo Receiver](#), [Bluetooth Car Stereo](#), [Bluetooth Handsfree FM](#)

[Community](#) [About eBay](#) [Announcements](#) [Security Center](#) [Resolution Center](#) [Seller Information Center](#) [Policies](#) [Site Map](#) [eBay official time](#) [Preview new features](#) [Contact us](#)

[Tell us what you think](#)

Copyright © 1995-2013 eBay Inc. All Rights Reserved. [User Agreement](#) and [Privacy Policy](#).

EXHIBIT

5

All Categories



Find it fast...



Cart (0)

Deals Computers & Office Clothing, Shoes, Jewelry Electronics Wine, Gourmet, Gifts Video Games Books, Movies, Music Home & Household Health & Beauty Toys & Baby Sports & Bags

Holiday Store

Other products matching "hipe speaker"



Hipe Waterproof Wireless Bluetooth Shower Speaker & Handsfree speakerphone - Black - Compatible with
2 New from \$62.95

[See all 2 results](#)

HOME & OUTDOOR > APPLIANCES > KITCHEN APPLIANCES > SMALL KITCHEN APPLIANCES > TOASTERS

Hipe Waterproof Bluetooth Shower Speaker & Handsfree speakerphone - White

Earn Super Points: [Write a Review](#)

List Price: ~~\$87.47~~ (Save 23%)

Today \$66.99 Free Budget Shipping

EARN 67 RAKUTEN SUPER POINTS™

Condition: Brand New

In Stock: Usually Ships in 1 to 2 business days

1 New from \$62.95

See All



★ Add to Wishlist ♥ Save for later

Share



Like

0

+1

0

QUANTITY:

1

Add to Cart

Ships from/sold by [Factory Advantage LLC](#)

[Who's this?](#)

Seller Rating:

[Seller Return Policy](#)

[Sell Your Item](#)

SquareTrade Protection Plan

☐ SquareTrade 3-Year Appliances \$10.99

Warranty

☐ SquareTrade 4-Year Appliances \$14.99

Warranty

MORE BUYING OPTIONS

[Widget General](#) \$62.95 + FREE shipping

View All Buying Choices +

Product Details:

Manufacturer: Hipe

UPC: 815361019758

Sales Rank: 101151

Mfg Part#: HIP400 White

UPC 14: 00815361019758

Sku: 254098178

Package Weight: 0.9 lbs

See more in [Toasters](#)

Compatible with any Bluetooth media player or phone - works great with apple iPhone 5 Siri, Android Devices and phones, Samsung S-Voice, Google Music, Pandora and all other audio APPs on your android or iPhone. 2 Key features were updated 1: The battery was upgraded. 2: The phone volume is now leveled with the music volume. Auto Pairing Feature: Pairs your device with the Hipe speaker automatically when it is in range of the speaker. Waterproof (Rated IPX6) Can withstand powerful water jets - Built in Echo cancellation and Noise suppression. Run time: up to 25 hours. (If the unit has not been used for more than 10 days, please charge it before using).

More Products In This Category



Raspberry Pi Model B Revision 2.0 (512MB)

Price: \$48.99

\$55.04 10% Off

FREE SHIPPING

Add item



Hamilton Beach Brushed Stainless 2-Slice Toaster

Price: \$36.57

FREE SHIPPING

Add item



Hamilton Beach 24121 SmartToast® 4-Slice Cool

Price: \$32.24

\$39.99 19% Off

FREE SHIPPING

Add item



Beats Solo HD On-Ear Headphone (Dark Blue)

Price: \$164.96

\$229.95 28% Off

FREE SHIPPING

Details



LG Motion 4G LTE Prepaid Android Phone (MetroPCS)

Price: \$64.95

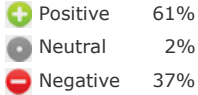
List: \$176.91

Add item

About the Seller**Factory Advantage LLC**

Feedback Rating:

Lifetime 46 ratings

Feedback Rating Summary
(Last 12 Months)[View all](#)**Seller Description**

Factory Advantage is a multi-channel retailer based out of Denver, CO. We work directly with a number of large manufacturers to give our customers the best deals on the widest selection of home and garden items possible. Our goal is to ensure that the customer experience is 100% positive.

Marketplace Guarantee Claim

Buyers should receive Marketplace items in the condition that they were listed. We ask buyers to first contact the seller to give them a chance to address any issues. If the seller does not respond or if the issue is not addressed to the customer's satisfaction buyers can rely on our Rakuten.com Marketplace Guarantee Claim which, covers the first \$750 of every purchase... [read more](#)

Returns Policy

Factory Advantage offers a 30-day, hassle-free return policy. If you are not satisfied with your purchase, you may return your item(s) within 30 business days of receiving your shipment. We will gladly refund the total purchase price minus any shipping costs. Please contact us prior to returning you... [read more](#)

Shipping Info

We offer Free Ground Shipping on all of the items we sell. However, we cannot guarantee shipping times as we ship from multiple warehouses throughout the country.

Recent Feedback[View all](#)

“Really Bad. Got cancellation after placing order. Never AGAIN!”

11/20/2013

ListingID: 300622714

“excellent”

11/14/2013

ListingID: 296223586

“thanks”

11/9/2013

ListingID: 300644337

What's Hot In Toasters

Glitzi Globes Dome Maker and Display Unit

Price: \$20.99

List: \$46.99

[Add item](#)

'Sisters Go Camping' Barbie Camper and 4 Dolls by Mattel

Price: \$279.99\$315.99 **11% Off****FREE SHIPPING**[Add item](#)

SINGER Factory Serviced 160 Anniversary Limited Edition

Price: \$267.99**FREE SHIPPING**[Add item](#)

Ryobi P100 One+ 18 Volt 1.5Ah Battery # 130224048

Price: \$38.90

List: \$79.99

FREE SHIPPING[Add item](#)

Monster High Gloom Beach Doll 5Pack Cleo de Nile, Draculaura, etc.

Price: \$185.99

\$194.99

FREE SHIPPING[Add item](#)**More Sizzling Products In Home And Outdoor**

Motion Activated Porch Light - 2 Pack White

Price: \$29.99

List: \$99.99

FREE SHIPPING[Add item](#)

True Heroes Rescue Heroes 4 Inch Action Figure 5-pack -

Price: \$60.99**FREE SHIPPING**[Add item](#)

32pc Airtight Snap Lock Lid Food Container Storage Set

Price: \$24.00

List: \$48.00

FREE SHIPPING[Add item](#)

Faux Ivy Privacy Fence Screen 94" X 59" Artificial Hedge

Price: \$49.95**FREE SHIPPING**[Add item](#)

Jello Shot Injector: 1 Piece

Price: \$0.95[Add item](#)[More Product Views](#)



Top Searched Keywords

[beats by dre](#) [betty boop](#) [bluetooth speakers](#) [cables](#) [christmas ornament](#) [dining furniture](#) [earphones](#) [fisherprice](#) [foyer lighting](#)
[galaxy s3 case](#) [garden flag](#) [health beauty fragrance mens](#) [ipad air cases](#) [iphone 5c cases](#) [iphone 5s accesories case](#) [ipod covers](#)
[mystic topaz ring](#) [nec phone](#) [phone cases iphone5 cases](#) [playstation 4 console](#) [pop-up note dispenser purse](#) [printers](#) [salsa music](#)
[samsung galaxy note 3 cases](#) [speakers](#) [sports coverage new york sports](#) [unlocked cell phones](#) [usb hard drive](#) [watch casio](#) [xbox one console](#)

Company Info

About Us
Advertising
Press Releases
Become an Affiliate

BuyTV
Careers
Rakuten Super Points
Sell on Rakuten.com

Customer Service

Help Center
Order Status
Return a Product
Low Price Guarantee
Forgot Password?
Contact Us
Sign Up For Our Newsletter

Rakuten

Austria
Brazil
France
Germany
Indonesia
Japan
Malaysia
Spain

Taiwan
Thailand
United Kingdom
United States
Rakuten Golf USA
International
All Rakuten Services
Export to Japan

Currently offering 18,692,122 Total Products Available for immediate shipping!



EXHIBIT

6

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register**Serial Number: 85406573****Filing Date: 08/24/2011****The table below presents the data as entered.**

Input Field	Entered
SERIAL NUMBER	85406573
MARK INFORMATION	
*MARK	\\TICRS\EXPORT11\IMAGEOUT11\854\065\85406573\xml1\ APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	HIPE
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the stylized text "HIPE" with the letter representing an on button.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	944 x 566
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	C&A Marketing Inc.
*STREET	2 Bergen Turnpike
*CITY	Ridgefield Park
*STATE (Required for U.S. applicants)	New Jersey
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	07660
PHONE	201-881-1933
FAX	201-881-1935
EMAIL ADDRESS	issac@camarketingusa.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	
*IDENTIFICATION	Audio speakers; Headphones; MP3 players; Power inverters; Radios incorporating clocks; Internet radios; Surveillance cameras; Baby monitors; Computer cameras; Wireless Network routers; Computer network adapters; USB cables; Keyboards; Scales; Sound and video recording and playback machines
FILING BASIS	SECTION 1(b)
CORRESPONDENCE INFORMATION	
NAME	C&A Marketing Inc.
FIRM NAME	C&A Marketing Inc.
STREET	2 Bergen Turnpike
CITY	Ridgefield Park
STATE	New Jersey
COUNTRY	United States
ZIP/POSTAL CODE	07660
PHONE	201-881-1933
FAX	201-881-1935
EMAIL ADDRESS	issac@camarketingusa.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	

SIGNATURE	/Akiva Klein/
SIGNATORY'S NAME	Akiva Klein
SIGNATORY'S POSITION	President
DATE SIGNED	08/24/2011

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85406573

Filing Date: 08/24/2011

To the Commissioner for Trademarks:

MARK: HIPE (stylized and/or with design, see [mark](#))

The literal element of the mark consists of HIPE.

The mark consists of the stylized text "HIPE" with the letter representing an on button.

The applicant, C&A Marketing Inc., a corporation of New York, having an address of

2 Bergen Turnpike

Ridgefield Park, New Jersey 07660

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class ____: Audio speakers; Headphones; MP3 players; Power inverters; Radios incorporating clocks; Internet radios; Surveillance cameras; Baby monitors; Computer cameras; Wireless Network routers; Computer network adapters; USB cables; Keyboards; Scales; Sound and video recording and playback machines

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Correspondence Information:

C&A Marketing Inc.

C&A Marketing Inc.

2 Bergen Turnpike

Ridgefield Park, New Jersey 07660

201-881-1933(phone)

201-881-1935(fax)

issac@camarketingusa.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Akiva Klein/ Date Signed: 08/24/2011

Signatory's Name: Akiva Klein

Signatory's Position: President

RAM Sale Number: 7830

RAM Accounting Date: 08/25/2011

Serial Number: 85406573

Internet Transmission Date: Wed Aug 24 20:05:44 EDT 2011

TEAS Stamp: USPTO/BAS-208.30.2.66-201108242005444508

23-85406573-480f758f480a90759070cc9ff51f

262963-DA-7830-20110824144023520565

hipc

EXHIBIT

7

To: C&A Marketing Inc. (issac@camarketingusa.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85406573 - HIPE - N/A
Sent: 12/19/2011 1:47:40 PM
Sent As: ECOM106@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85406573

MARK: HIPE

85406573

CORRESPONDENT ADDRESS:

C&A MARKETING INC.
C&A MARKETING INC.
2 BERGEN TPKE
RIDGEFIELD PARK, NJ 07660-2340

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: C&A Marketing Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

issac@camarketingusa.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/19/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Trademark Act Section 2(d) Refusal to Register – Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3734932. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, ___ F.3d ___, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 *et seq.*

In the instant case, applicant has applied to register "HIPE" with the letter representing an on button for "audio speakers; Headphones; MP3 players; Power inverters; Radios incorporating clocks; Internet radios; Surveillance cameras; Baby monitors; Computer cameras; Wireless Network routers; Computer network adapters; USB cables; Keyboards; Scales; Sound and video recording and playback machines."

The cited registered mark is HYPE for "players with earphones and MP4 players with earphones."

Similarity of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

Here, the marks are highly similar in appearance, sound, meaning or connotation, and commercial impression with the shared use of HIPE and HYPE. The marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA*

Realty Prof'ls, Inc., 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services; therefore, the word portion is normally accorded greater weight in determining whether marks are confusingly similar. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii); see *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267-68 (TTAB 2011).

The word portions of the marks are nearly identical in appearance, sound and meaning. The addition of the design element does not obviate the similarity of the marks in this case. See *In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

Relatedness of the Goods

Here, the goods are identical MP3 players and other highly related electronics items. If the goods and/or services of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); see *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient to show that because of the conditions surrounding their marketing, or because they are otherwise related in some manner, the goods and/or services would be encountered by the same consumers under circumstances such that offering the goods and/or services under confusingly similar marks would lead to the mistaken belief that they come from, or are in some way associated with, the same source. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); see *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984); TMEP §1207.01(a)(i).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Prior Pending Applications

The filing dates of pending Application Serial Nos. 85406040 and 85405997 precede applicant's filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant's mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant's response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced applications.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the marks in the referenced applications. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

Response Guidelines

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

Because of the legal technicalities involved in this application, applicant may wish to hire an attorney specializing in trademark or intellectual property law. For attorney referral information, applicant may consult the American Bar Association's Consumers' Guide to Legal Help at <http://www.abanet.org/legalservices/findlegalhelp/home.cfm> or a local telephone directory. The USPTO cannot aid in the selection of an attorney. 37 C.F.R. §2.11.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Leslie L. Richards/
Trademark Examining Attorney Law Office 106
571-272-1256 phone
571-273-9106 fax
leslie.richards@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

Print: Dec 19, 2011

77541578

DESIGN MARK

Serial Number

77541578

Status

REGISTERED

Word Mark

HYPE

Standard Character Mark

Yes

Registration Number

3734932

Date Registered

2010/01/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

PNC BANK, NATIONAL ASSOCIATION, AS AGENT INC. ASSOCIATION UNITED STATES TWO TOWER CENTER BOULEVARD EAST BRUNSWICK NEW JERSEY 08816

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: MP3 players with earphones and MP4 players with earphones. First Use: 2008/01/01. First Use In Commerce: 2008/01/01.

Filing Date

2008/08/07

Examining Attorney

CORDOVA, RAUL

Attorney of Record

Robert Haroun

HYPE

Print: Dec 19, 2011

85405997

DESIGN MARK

Serial Number

85405997

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

HYPE HYPEMUSIC.COM

Standard Character Mark

No

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Extreme Group Holdings LLC LIMITED LIABILITY COMPANY DELAWARE 1531
14th Street, Santa Monica, CA 90404 550 Madison Avenue New York NEW
YORK 10022

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Compact discs, tapes, disks, diskettes, cassettes, CD- ROMs, DVD-ROMs, computer software; all bearing or for bearing data, music, sound and/or images; apparatus for recording, transmission and/or reproduction of data, music, sound and/or images. Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records featuring music, sounds and entertainment; musical sound and video recordings; downloadable ring tones, music, sounds, mp3 files, graphics, electronic games, images and videos for wireless communication devices; downloadable videos featuring music and entertainment, music, sounds, mp3 files, graphics, computer game programs and images. First Use: 2011/03/14. The mark was first used anywhere in a different form other than that sought to be registered at least as early as 03/14/2011. First Use In Commerce: 2011/03/14.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Musical entertainment and educational services; music production and music library services. Production of radio programs; production and publishing of music; providing online entertainment, namely, providing non-downloadable sound and video recordings in the field of music and

Print: Dec 19, 2011**85405997**

music based entertainment; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; fan clubs; development and dissemination of educational materials of others in the field of music and entertainment; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; entertainment in the nature of ongoing radio programs in the field of music; entertainment in the nature of live concerts and performances by musical artists and groups; entertainment services, namely, personal appearances by musical groups, musical artists and celebrities; entertainment services in the nature of performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely, performances by musical artists rendered live and recorded for future distribution; educational and entertainment services, namely, production and presentation of music shows and award shows before live audiences which are all broadcast live or taped for later broadcast; entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, photographs, and other multimedia materials featuring music and entertainment; entertainment services, namely, providing prerecorded non-downloadable music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services, namely, live, televised and movie appearances by a professional entertainer; publishing of web magazines; online music services, namely, providing electronic library services which feature musical and non-musical sound recordings via an online computer network; providing an online searchable database featuring cataloged and indexed recorded music and sounds; and publication of music books, musical compositions, musical arrangements, and musical text; and music composition for others. First Use: 2011/03/14. The mark was first used anywhere in a different form other than that sought to be registered at least as early as 03/14/2011. First Use In Commerce: 2011/03/14.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HYPE HYPE MUSIC.COM" APART FROM THE MARK AS SHOWN.

Description of Mark

The mark consists of a stylized font with the letters consisting of i) a red outline of the word "HYPE" with a white interior, and ii) the words "HYPEMUSIC.COM" in red capital letters against a white background below and center of the stylized "HYPE".

Colors Claimed

The color(s) red and white is/are claimed as a feature of the mark.

Filing Date

2011/08/24

Print: Dec 19, 2011

85405997

Examining Attorney
FISHER, HANNAH M.

Attorney of Record
Brenda Sherry



Print: Dec 19, 2011

85406040

DESIGN MARK

Serial Number

85406040

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

HYPE HEAR NO EVIL

Standard Character Mark

No

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Extreme Group Holdings LLC LIMITED LIABILITY COMPANY DELAWARE 1531
14th Street, Santa Monica, CA 90404 550 Madison Avenue New York NEW
YORK 10022

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S: Compact discs, tapes, disks, diskettes, cassettes, CD- ROMs, DVD-ROMs, computer software; all bearing or for bearing data, music, sound and/or images; apparatus for recording, transmission and/or reproduction of data, music, sound and/or images. Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs, DVDs, laser discs, and phonograph records featuring music, sounds and entertainment; musical sound and video recordings; downloadable ring tones, music, sounds, mp3 files, graphics, electronic games, images and videos for wireless communication devices; downloadable videos featuring music and entertainment, music, sounds, mp3 files, graphics, computer game programs and images. First Use: 2011/05/23. The mark was first used anywhere in a different form other than that sought to be registered at least as early as 03/14/2011. First Use In Commerce: 2011/05/23.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Musical entertainment and educational services; music production and music library services. Production of radio programs; production and publishing of music; providing online entertainment, namely, providing non-downloadable sound and video recordings in the field of music and

Print: Dec 19, 2011

85406040

music based entertainment; entertainment services, namely, providing online non-downloadable prerecorded musical sound and video recordings via a global computer network; fan clubs; development and dissemination of educational materials of others in the field of music and entertainment; radio entertainment production and distribution; audio and sound recording and production; record production; videotape production; entertainment in the nature of ongoing radio programs in the field of music; entertainment in the nature of live concerts and performances by musical artists and groups; entertainment services, namely, personal appearances by musical groups, musical artists and celebrities; entertainment services in the nature of performances rendered by musical artists through the medium of television, radio, and audio and video recordings; entertainment services, namely, performances by musical artists rendered live and recorded for future distribution; educational and entertainment services, namely, production and presentation of music shows and award shows before live audiences which are all broadcast live or taped for later broadcast; entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, photographs, and other multimedia materials featuring music and entertainment; entertainment services, namely, providing prerecorded non-downloadable music, information in the field of music, and commentary and articles about music, all online via a global computer network; entertainment services, namely, live, televised and movie appearances by a professional entertainer; publishing of web magazines; online music services, namely, providing electronic library services which feature musical and non-musical sound recordings via an online computer network; providing an online searchable database featuring cataloged and indexed recorded music and sounds; and publication of music books, musical compositions, musical arrangements, and musical text; and music composition for others. First Use: 2011/05/23. The mark was first used anywhere in a different form other than that sought to be registered at least as early as 03/14/2011. First Use In Commerce: 2011/05/23.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HYPE HEAR NO EVIL" APART FROM THE MARK AS SHOWN.

Name/Portrait Statement

The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

Description of Mark

The mark consists of a stylized font i) with the word "HYPE" consisting of a red outline with a translucent interior, and ii) the words "HEAR NO EVIL" in all white capital letters at a slight angle against a solid rectangular red background.

Colors Claimed

The color(s) red and white is/are claimed as a feature of the mark.

Print: Dec 19, 2011

85406040

Filing Date

2011/08/24

Examining Attorney

FISHER, HANNAH M.

Attorney of Record

Brenda Sherry



To: C&A Marketing Inc. (issac@camarketingusa.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85406573 - HIPE - N/A
Sent: 12/19/2011 1:47:43 PM
Sent As: ECOM106@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 85406573) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on **12/19/2011 to which you must respond. Please follow these steps:**

1. Read the Office letter by clicking on this [link](#) **OR** go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to [access](#) the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from **12/19/2011** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System [Response to Office Action form](#). If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/Leslie L. Richards/
Trademark Examining Attorney Law Office 106
571-272-1256 phone
571-273-9106 fax
leslie.richards@uspto.gov

WARNING

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System [Response to Office Action form](#).

EXHIBIT

8

[Network Solutions](#) >> [Whois](#) >> Results

[Log In](#)

- [Search](#)
- [Renew](#)
- [Transfer](#)
- [Features](#)
- [Private Registration](#)
- [Protect](#)
- [Forward](#)

WHOIS Results for hipeusa.com

Available domain names similar to hipeusa.com

Available Extensions

- ☐ **hipeusa.info**
- ☐ **hipeusa.biz**
- ☐ **hipeusa.co.uk**
- ☐ **hipeusa.pro**

Premium Resale Domains

- | | |
|--|----------------|
| <input type="checkbox"/> hiphopsneakersusa.com | \$877 |
| <input type="checkbox"/> allhipho.com | \$4,288 |
| <input type="checkbox"/> ebookviewers.com | \$599 |
| <input type="checkbox"/> mstusa.com | \$688 |
| <input type="checkbox"/> hipeusa.im | |
| <input type="checkbox"/> hipeusa.co | |
| <input type="checkbox"/> hipeusa.asia | |
| <input type="checkbox"/> hipeusa.xxx | |
| <input type="checkbox"/> hipeusa.ca | |
| <input type="checkbox"/> acehiphop.com | \$677 |
| <input type="checkbox"/> discountedebbooks.com | \$649 |
| <input type="checkbox"/> rdausa.com | \$300 |

[View more](#)

Add Selected to Cart

Promote your business to millions of viewers for only \$1.25 a month!

Learn how you can get an Enhanced Business Listing here for your domain name. [Learn More](#)

hipeusa.com

Is this your domain name? [Renew it now.](#)

Domain Name: HIPEUSA.COM
Registry Domain ID: 1670117656_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Update Date: 2013-02-18 14:00:00
Creation Date: 2011-08-02 15:33:02
Registrar Registration Expiration Date: 2014-08-02 15:33:02
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.480-624-2505
Domain Status: ok
Registry Registrant ID:
Registrant Name: Chaim Piekarski
Registrant Organization: C&A Marketing Inc
Registrant Street: 2 Bergen Turnpike
Registrant City: Ridgefield Park
Registrant State/Province: New Jersey
Registrant Postal Code: 07660
Registrant Country: United States
Registrant Phone: +1.201881900
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: sam@camarketingusa.com
Registry Admin ID:
Admin Name: Chaim Piekarski
Admin Organization: C&A Marketing Inc
Admin Street: 2 Bergen Turnpike
Admin City: Ridgefield Park
Admin State/Province: New Jersey
Admin Postal Code: 07660
Admin Country: United States
Admin Phone: +1.201881900
Admin Phone Ext:
Admin Fax:
Admin Fax Ext:
Admin Email: sam@camarketingusa.com
Registry Tech ID:
Tech Name: Chaim Piekarski
Tech Organization: C&A Marketing Inc
Tech Street: 2 Bergen Turnpike
Tech City: Ridgefield Park
Tech State/Province: New Jersey
Tech Postal Code: 07660
Tech Country: United States
Tech Phone: +1.201881900
Tech Phone Ext:

Tech Fax:
Tech Fax Ext:
Tech Email: sam@camarketingusa.com
Name Server: NS1.WIX.COM
Name Server: NS2.WIX.COM
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.in
Last update of WHOIS database: 2013-12-10T20:00:00Z

The data contained in GoDaddy.com, LLC's WhoIs database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the permission of GoDaddy.com, LLC. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible the dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

Make an instant, anonymous offer to the current domain registrant. [Learn More](#)

Make Offer

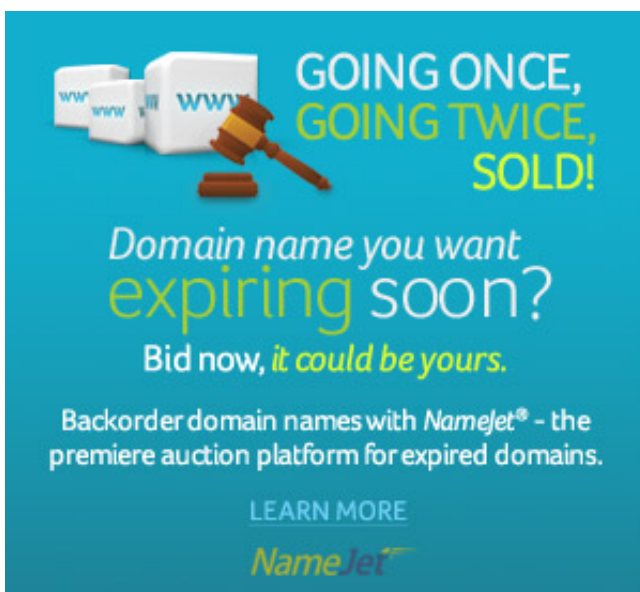
Search Again

Search again here...

Search by either

- ☒ [Domain Name](#) e.g. networksolutions.com
- ☐ [IP Address](#) e.g. 205.178.187.13

Search

An advertisement for NameJet, a domain auction platform. The background is a solid teal color. In the top left, there are three white 3D cubes with 'www' written on them, and a wooden gavel resting on one of them. To the right of the cubes, the text 'GOING ONCE, GOING TWICE, SOLD!' is written in white and yellow. Below this, the text 'Domain name you want expiring soon?' is written in white and yellow. Underneath that, 'Bid now, it could be yours.' is written in white. Further down, 'Backorder domain names with NameJet® - the premiere auction platform for expired domains.' is written in white. At the bottom, 'LEARN MORE' is written in white, and the NameJet logo is at the very bottom in white and yellow.

GOING ONCE,
GOING TWICE,
SOLD!

Domain name you want
expiring soon?

Bid now, *it could be yours.*

Backorder domain names with NameJet® - the
premiere auction platform for expired domains.

LEARN MORE

NameJet



Processing...



EXHIBIT

9

CONFIDENTIAL SETTLEMENT AGREEMENT

THIS CONFIDENTIAL SETTLEMENT AGREEMENT (the "Agreement") is entered into and agreed to effective as of August 30, 2013 (the "Effective Date"), by and between THE DGL GROUP, LTD., a New York corporation with a place of business at 195 Raritan Center Parkway Edison, New Jersey 08837 ("DGL"), on the one hand, and C&A MARKETING, INC., a New Jersey corporation located at 2 Bergen Turnpike, Ridgefield Park, New Jersey 07660 ("C&A"), on the other hand (each a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, DGL is the owner of a Federal Trademark Registration for the mark HYPE, Registration Number 3734932 (the "Registered Mark") as well as other related marks under common law (collectively with the Registered Mark, the "Marks") and is a distributor and retailer of certain consumer electronics under the HYPE trademark;

WHEREAS, DGL has asserted a trademark infringement claim, an unfair competition claim and various other claims (collectively, the "Disputes") against C&A by letter dated July 19, 2013 from DGL's counsel, The Dallal Firm, alleging that C&A's use of the mark HIPE in connection with the marketing and sale of audio speakers and batteries (the "Products") infringes the rights of DGL under the Marks;

WHEREAS, DGL and C&A now desire to settle and resolve all disputes relating to C&A's use of the mark HIPE;

WHEREAS, DGL has requested certain assurances from C&A and has agreed not to sue C&A under the rights associated with such Marks as set forth herein.

NOW, THEREFORE, in exchange for the mutual premises and undertakings set forth herein, and for other good and valid consideration given and received, the Parties hereby agree as follows:

AGREEMENT

1. Validity and Enforceability of the Marks. C&A agrees and admits to the validity and enforceability of the Registered Mark. Moreover, C&A agrees to never contest the validity of the Registered Mark in any form of cancellation proceeding either before the USPTO or in any federal court proceeding or in any foreign proceeding. Likewise, C&A agrees that the Registered Mark is distinctive and has acquired secondary meaning in the marketplace.
2. Agreement to Cease Use. C&A agrees to take the following actions with respect to HIPE branded Products manufactured, marketed or sold by C&A:
 - (a) Promptly cease all future use of the HIPE mark in any form or capacity after the Effective Date; provided, however, that any products bearing the HIPE mark manufactured or in the manufacturing process as of the Effective Date will be subject to Section 2(c).
 - (b) Promptly change all active Amazon.com or other online listings for products bearing the HIPE mark to remove references or pictures of HIPE and replace all such references with "HIP-O" or another name approved by DGL.
 - (c) On or before December 31, 2013, deplete its entire inventory of HIPE branded products by selling them exclusively on Amazon.com only pursuant to the requirements set forth

in Section 2(b) (and not to any retail, brick and mortar stores or other resellers or marketplaces of any kind) and thereafter not sell any products branded HIPE and remove all of its HIPE online sales listings.

- (d) Within five business days of the Effective Date, C&A shall provide to DGL an inventory, certified by an officer of C&A, of all C&A products bearing the HIPE mark. On or before January 24, 2014, C&A shall provide to DGL an accounting, certified by an officer of C&A, of all products bearing the HIPE mark sold and shall promptly forward any remaining products bearing the HIPE mark to DGL.
- (e) Promptly disable and keep dormant the domain HIPEUSA.com.

3. General Release. Subject to the full and faithful performance by each Party of the terms of this Agreement, each Party hereby completely and unconditionally releases and forever discharges the other Party and its representatives, employees, directors, members, shareholders, affiliates, agents, successors, and assigns from any and all past or present claims, commissions, demands, causes of action, obligations, liability, damages, promises, agreements, costs, losses, expenses, and compensation of any nature and from whatever source, in law or in equity, whether contingent or fixed, known or unknown, suspected or unsuspected, liquidated or unliquidated, whether based on tort, contract, vicarious liability, or any other theory of recovery and whether for compensation, future commissions, contribution, or indemnity, court costs, attorneys' fees, or punitive damages, that each Party has against the other Party arising out of or related to the Disputes.
4. Warranties. Each Party hereby represents and warrants to the other Party that: (i) on behalf of that Party, the person signing this Agreement has the full right, power and authority to enter into this Agreement and to grant the releases contained herein; (ii) the Party owns or has the right to release each and all of the claims which the Agreement purports to release; (iii) there has been no assignment or transfer whatsoever of any of the claims released herein; (iv) the Party is releasing potentially unknown claims; (v) the releases are fair in light of the mutuality of the terms of this Agreement; (vi) the release of claims and rights is voluntary; and (vii) the Party has been advised to consult with counsel before executing this Agreement, has been given a reasonable period of time within which to consider the terms of this Agreement, and enters into this Agreement only after such consultation.
5. Breach. In the event that either Party shall fail to comply with any provision of this Agreement, and such breach shall continue for more than 30 days after the non-breaching Party has given the breaching Party written notice of such breach, this Agreement may be terminated by the non-breaching Party and the non-breaching Party shall have all rights afforded to it under the law as if this Agreement was never executed. The foregoing notwithstanding, in the event C&A: (a) fails to remove any of its live and active HIPE-branded product listings on any internet site after December 31, 2013, (b) sells any unit of HIPE-branded product after December 31, 2013, or (c) sells any unit of HIPE-branded product through any marketplace (other than Amazon.com as provided above) or to any reseller of any kind after the Effective Date and prior to December 31, 2013, then C&A shall pay DGL as liquidated damages an amount that is equal to 2 times (2x) the advertised price of such products for such prohibited activities. The Parties agree that the foregoing amounts are reasonable under the circumstances in light of the inherent difficulty in ascertaining actual damages. None the of remedies specified in this Agreement shall bar DGL

from seeking any and all additional remedies and relief available to DGL, including but not limited to injunctive relief.

6. Confidentiality. The Parties, on behalf of themselves and their representatives, agents and attorneys represent and agree that the terms and conditions of this Agreement are confidential, and that they have not disclosed and will not disclose the terms and conditions of this Agreement to anyone, except to their accountants and attorneys (who will be informed of this confidentiality provision), as is required by law, or to the extent necessary to implement this Agreement. Neither Party shall issue a press release or make any other public announcement regarding this Agreement.
7. Non-disparagement. Each Party agrees that its reputation is important and should not be impaired by the other Party. Each Party therefore covenants not to disparage or otherwise cast in a false light the professional or business reputation of the other Party, its members, partners, employees, officers, shareholders, directors, or management. Prior to bringing any formal action to enforce this Section, each Party agrees to provide written notice to the other Party of any perceived violation of this Section, and to provide at least three business days to resolve the perceived violation.
8. Agreement not to Contest Claim. In the event that DGL commences a lawsuit to enforce its rights with respect to the Marks, C&A agrees that it will not contest any claim made by DGL that the mark "HIPE" is confusingly similar to the Marks.
9. No Reliance. In executing this Agreement, each of the undersigned signatories acknowledges: (i) reading the entire Agreement; (ii) having the opportunity to consult and consulting with counsel; (iii) understanding all of the terms of the Agreement; and (iv) that such signatory and the Party they represent is not relying on any statement or representation made by any Party or that Party's counsel, and that the signatory and Party they represent are relying solely upon their own judgment and/or the advice of their own counsel. The Parties further represent and acknowledge that they have: (a) carefully read this Agreement; (b) signed and entered into the Agreement voluntarily and free of duress or coercion; and (c) not relied upon any oral statements, promises or explanations made by the other Party that are not contained herein.
10. Binding Effect. The Parties make all promises, covenants, representations and warranties herein on behalf of themselves and any and all parents, sister corporations, subsidiaries, DBAs, affiliates, insurers, directors, officers, employees, agents, shareholders, successors, representatives, licensees and assigns.
11. Full Integration. This Agreement is the final written expression and the complete and exclusive statement of all of the agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the Parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby. Any amendment to this Agreement must be in writing, must specifically refer to this Agreement, and must be signed by duly authorized representatives of each of the Parties.

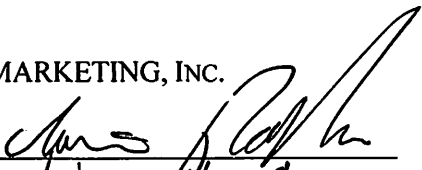
12. Governing Law. The validity, interpretation, and legal effect of this Agreement shall be governed by the laws of the State of New Jersey, without regard to conflicts of laws principles.
13. Survival of Warranties. All representations and warranties contained in this Agreement shall survive its execution, effectiveness, and delivery.
14. Further Assurances. Each Party shall cooperate and take such action as reasonably may be requested by the other Party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.
15. No Presumption From Drafting. This Agreement was executed after arms-length negotiations between the Parties, and reflects the conclusion that the Agreement is in the best interest of all of them. No presumption for or against either Party hereto arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected to, or involving this Agreement.
16. Headings. The headings to the Sections of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
17. Counterparts. This Agreement may be executed in any number of counterparts by the Parties, and when each Party hereto has signed and delivered at least one such counterpart to the other party hereto, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement that shall be binding and effective as to all Parties. Electronic transmissions of any signed original document, or transmission of any signed facsimile document, shall be the same as delivery of an executed original.
18. Notice. Any written notice required or permitted to be given under this Agreement shall be sufficient if sent by overnight mail to the other Party at the address in the preamble of this Agreement, and shall be deemed given as of the day after the date so sent. Although notice is to be given in writing, the Parties agree to make a good-faith effort to telephone the applicable Party when notice is being given.
19. Enforcement of Rights. The Parties consent to the exclusive jurisdiction and venue of the federal and state courts sitting in New Jersey for the purpose of adjudicating any dispute related to or arising out of this Agreement. No proceeding may be initiated under this Agreement unless and until the Parties first engage in an in-person, good faith settlement conference.
20. Attorneys' Fees for Enforcement. In any litigation to enforce this Agreement (or any portion thereof), the prevailing party shall be entitled to recover its (or his or her) reasonable attorneys' fees from the non-prevailing party.

WHEREFORE, IN WITNESS HEREOF, the Parties have executed this Confidential Settlement Agreement in a manner appropriate to each, and the persons signing on behalf of the Parties warrant and represent that they have full authority to act on the Party's behalf.

THE DGL GROUP, INC.

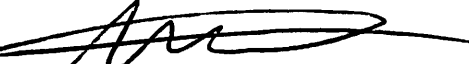
By _____
Print _____
Its _____

C&A MARKETING, INC.

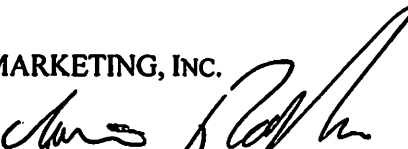
By 
Print Chaim Pekarsh
Its v.p.

WHEREFORE, IN WITNESS HEREOF, the Parties have executed this Confidential Settlement Agreement in a manner appropriate to each, and the persons signing on behalf of the Parties warrant and represent that they have full authority to act on the Party's behalf.

THE DGL GROUP, INC.

By 
Print Victor Gardener
Its V.P.

C&A MARKETING, INC.

By 
Print Chaim Reikavsky
Its V.P.

EXHIBIT

10

WHO'S NEXT

THE AMAZON WHISPERER

ON THE TRAIL OF A MYSTERIOUS ONLINE COMPANY THAT HAS
CRACKED THE SECRET TO MAKING PRODUCTS PEOPLE WANT.

BY JASON FEIFER

My Amazon search was specific: I wanted an inexpensive, waterproof, Bluetooth-enabled, rechargeable speaker, so that I could listen to podcasts in the shower. I expected many options. Instead, I got one: some black-and-green gadget called Hipe. Was that the brand name, or the model? The customer reviewers didn't seem to know, but they all agreed: Whatever Hipe is--and all it had to its name was this speaker and a crappy website with a customer-service email address--the product does work. And if you have any questions, some guy named Sam responds by email. I've spent \$69.99 on shakier propositions. I bought it right away.

The speaker worked as advertised, but I had a question about connectivity. So I emailed Hipe, and, sure enough, Sam replied: "This is the answer I got from China, does this help at all?" What followed was a broken-English response that, after some parsing, was, in fact, helpful. But now Hipe made even less sense: Who was behind it? I Googled around and connected it to a New Jersey company called C&A Marketing, then emailed Sam to ask how the two were related. His reply: " ☺ "

I badgered. I pled. I finally talked Sam into meeting with me, and we set a date, but then he quickly retracted and put me in touch with a marketing guy, who put me in touch with a publicist, who invited me to a photography trade show in Manhattan called PhotoPlus and gave me these instructions: Come to the Polaroid stand and ask for Chaim.



Pikarski, right, and two of his buyers, in their room of massive Amazon monitoring

Chaim, it turned out, was Chaim Pikarski, an Orthodox Jewish man with a wispy red beard who seemed amused at my attempt to understand his business. He also knew his Hipe speaker would appeal to me, because that insight--knowing what people are searching for on Amazon--is at the core of what he does. He has an entire team of people who read reviews on Amazon, looking for moments when people say, "I wish this speaker were rechargeable." Pikarski then makes a rechargeable version. Hipe exists, in essence, because enough people think like me. It's a profitable trick: C&A Marketing does "in the nine figures" in sales every year, Pikarski says, and grows at about 30% annually.

Hipe is one of many thousands of products Pikarski has produced over the past 10 years, using so many brand names--DBTech, LyxLabs--that he's lost track. "My wife and kids don't buy anything for the house," he says. "Whenever they buy something, they're always afraid I'm going to come home and say, 'You know, I sell that.'" Then he invited me to his warehouse to see them all.

Sam is, in fact, a real person, but he's out of the room when Pikarski leads me into C&A's 150,000-square-foot headquarters in Ridgefield Park, New Jersey. "Here's your 10 Sams, and your 10 Sams-in-training," he says--meaning guys like the one I wrote. Before us are rows of cubicles, almost entirely inhabited by bearded, yarmulke-wearing men in crisp white shirts. These are Pikarski's buyers. (About half of C&A Marketing's 150-person staff is Orthodox, though the buyers division is more homogenous. "The buyer that does all the storage products, he's the only guy I let work out of home," Pikarski says. "He's Italian.")

On Amazon, the consumer doesn't look at a brand's full line of products; she looks at Amazon's full line

This is the heart of C&A: Each buyer has a specialty--beach products, cellular accessories, and so on. Their job is to scour the web to learn all the features people wish a product had, and hire a manufacturer, often in China, to make the desired version.

Pikarski lets each buyer create their own

Hipe-style brand name, and order anywhere from a dozen to a truckload of units. If they sell well, the product is renewed. Otherwise, it's junked.

This wasn't Pikarski's original plan. He had a camera-film company, but in 2001, as that industry waned, he sold it and joined forces with onetime competitor Akiva "Harry" Klein. Two years later, the men unveiled C&A Marketing and sold digital cameras. They became (and still are) one of Polaroid's largest licensees, making Polaroid products. (In 2012, they also bought a

FROM AMAZON TO STORES

C&A Marketing has been making products to sell online. But now it is redesigning some of them to sell on retail shelves. The Evolution of its waterproof blue-tooth speaker:



Camera.)

But Pikarski didn't want to be hitched to a shaky camera industry. In 2008, C&A began making lenses and other camera accessories, and from there, it wasn't a huge leap to consumer electronics. That's when he realized the transformative potential of platforms such as Amazon and eBay: Most manufacturers used them as a place to sell, but they're actually giant laboratories. In the past, say, an audio company would have to make many speakers--otherwise, who would take them seriously? But on Amazon, the consumer doesn't look at a brand's full line of products; she looks at Amazon's full line, meaning a tiny company with one speaker can compete against anyone. Pikarski's buyers need only to figure out what features

1. THE ORIGINAL

Its functionality is simple--Bluetooth connectivity and buttons to change volume, tracks, or answer phone calls--and it comes in black or white. C&A's Chaim Pikarski says, "We still sell thousands a month" of this speaker online. But he doesn't think that would cut it on store shelves, where the product might look cheap next to competitors'.



2. THE FAIL

C&A hired a design firm to remake the speaker. "We knew what it should do, but what are its materials, its finish?" Pikarski says. "They came up with this, which was pretty cheesy." Actually, Pikarski thinks it would have sold decently—but it's part of his new Ivation brand, so he's more image conscious than he is with straight-to-web products.



consumers want, and

then produce them.

Once they succeed in one category, it's

easier to understand a related one. "So then

you get to waterproof products," Pikarski

says. "Then to pool

products, because if you can have a speaker in your shower, you can have a speaker that floats in your pool. And then you're really getting into outdoor products. It's like my wife shopping--it never ends!"

Pikarski walks me through his warehouse. (He has others in London and China.) "It's very organized," he insists, though the organizing principle escapes me. Here's a stack of Wi-Fi boosters. There's a tower of flashlights. Pikarski often talks of his products as if they're hilariously obvious--that all he's done is open his ears. We pass a shipment of egg cookers sold under the brand DBTech. "There's nothing innovative about it," he says. "You like cooked eggs!"

The cooker sells alongside Cuisinart's on Amazon, and yet the two companies think very differently. Amazon is a "pretty significant" source of sales, says Cuisinart director of marketing communications Mary Rodgers, but Cuisinart, like many major brands, gets its feedback through expensive market research and services such as Google's Wildfire. "It's the product managers' responsibility to stay up to date on Amazon reviews," Rodgers says--but hey, product managers are busy folks. Pikarski is basically competing using a free, overlooked source of research.

He's surely not alone. More than 2 million of Amazon's vendors are what the site calls "third-party sellers," a complex designation that often means independent companies (including C&A). More than 40% of all sales on the site come from this group, up from 26% in 2007--making Amazon an ever-growing lifeline for the world's creators.

THIS NEW
This new version, which will go on sale in early 2014, hits Pikarski's goal: "It looks innovative," he says. The two hooks to hang it in the shower, better than the original's one hook, are another simple fix that customers wanted. And with stores in mind, the product will be made in many colors: "The more variations, the more space you get on shelves."

Amazon, of course, would like to actively serve both Pikarski and Rodgers, and it's tried to do that with a feature called Ask the Seller. Customers use it to reach out directly with questions. But Amazon spokesman Erik Fairleigh concedes that the feature isn't a market-research bounty. "Site-wide," he says, "I'm sure there are far more reviews than customers asking the seller." Those reviewers have no idea they just joined the R&D department.

Amazon retail isn't the endgame for Pikarski--it's only a trampoline off of which he's about to leap. "We said, 'Hey, wait a minute, we're producing all these products--let's innovate! Let's design!'" he says. Over the fall, he began rebranding everything he makes. The simple, straight-to-Amazon products (like that egg cooker) will get the brand name Jumbl. Well-selling Jumbl products will be redesigned and sold as Ivation; Pikarski will use the retail connections he fostered through Polaroid to place Ivation in stores, where he hopes the name will become recognized. (A third, its existing LyxLabs brand, will sell only pro audio equipment.) When we speak in September, a few products have been Ivationed and are up on Amazon. "We've seen a jump in sales in the double digits," he says.

"You get to waterproof products," says Pikarski. "Then to pool products. Then you're really getting into outdoor products. It never ends!"

So what happens to my Hipe? Pikarski finally summons my mystery pen pal, Sam, to explain. A few minutes later, Sam Kain walks in. He's a full-bearded 29-year-old whose face reddens when I introduce myself.

"Ooh, ooh, yeah!" he says. "How's the speaker working out?"

C&A has a customer-service department, but Hipe was one of Sam's babies, and he wanted to see feedback directly. That's why he, a buyer, was the one answering my emails. But in the year since I bought it, the battery has started to wane, I tell him.

"Oh, it did?" Sam says. "Well, just contact Chaim. We'll send you a new speaker."

"No, he'll buy a new one!" Pikarski protests.

Actually, I have my iPods based on customer reviews, I'd added features (caller ID, FM radio) and redesigned the speaker to be sold under Ivation. But the model I have will live on, sold with a Jumbl logo. People still buy it, so there's no reason to kill it off. Pikarski gives shoppers only what they want.

[Photos by Emiliano Granado]

A version of this article appeared in the December 2013 / January 2014 issue of *FAST COMPANY* magazine.



JASON FEIFER

Senior editor at Fast Company. Follow me on Twitter @heyfeifer. You probably, maybe won't regret it.

CONTINUE

November 18, 2013 | 6:00 AM

YOU MIGHT ALSO LIKE



FROM THE WEB

Christmas Shopping Secrets: How People Are Paying Less Than \$69 For New iPads
LIFEFACTOPIA



Dove Canada Uses Photoshop Trojan Horse to Shame Potential Body-Shamers
CO.CREATE



The Programmable Orgasm
FAST COMPANY



FROM THE WEB

5 Infographics to Teach You How to Easily Create Infographics in PowerPoint
HUBSPOT

[?]